

JUN 22 1965

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**Supreme Court of the United States**

**October Term, 1965**

**No. 282**

HARRY J. AMELL, JAMES J. ALLWEIN, JACK E.  
BENNETT, CHALMERS O. DETLING, *et al.*,

*Petitioners,*

*against*

THE UNITED STATES,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF CLAIMS**

LEE PRESSMAN

DAVID SCRIBNER

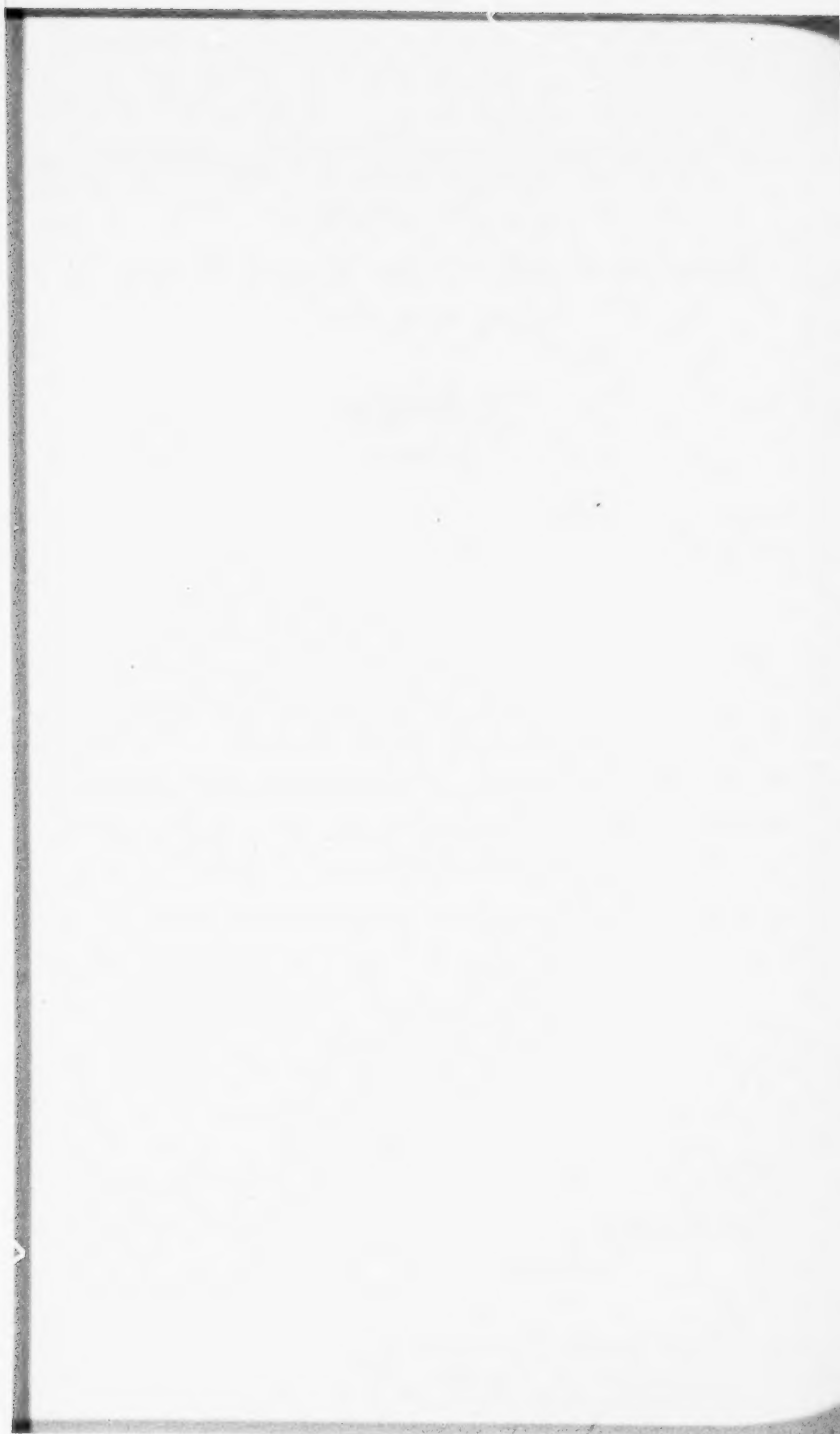
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# Supreme Court of the United States

October Term, 1965

No.

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HARRY J. AMELL, JAMES J. ALLWEIN, JACK E. BENNETT,  
CHALMERS O. DETLING, *et al.*,

*Petitioners,*

*against*

THE UNITED STATES,

*Respondent.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioners<sup>1</sup> pray that a writ of certiorari issue to

<sup>1</sup> The names of all petitioners are as follows:

### *Amell v. United States*

Harry J. Amell  
Charles Banish  
Edward A. Barnack  
Nicholas Bdera  
Frank W. Brett  
Marion R. Brogdon  
Loton M. Bryant  
Frank H. Calhoun  
Joseph R. Carman  
Fred Cipresso  
Jeremiah P. Collins  
Joseph P. Constantineau  
Robert E. Corder  
Carlos De Jesus  
George A. DeLong  
Anthony Drages  
Andrew J. Dunne  
George E. DuPont  
C. Forsyth  
Frederick J. Fromm  
Joseph Godlewski  
C. Gordon Grant, Jr.

William A. Gross  
Jacob M. Hand  
John Hargrave  
Charles Heller  
Soren G. Henriksen  
J. A. Kirven  
Andor Kittilsen  
Calvin M. Johnson  
Max J. Lechich  
Melvin F. Lesse  
A. Liberato  
James R. Loper  
Donald K. McKee  
John J. Markey  
John H. Miller  
Gaetano Minutillo  
Paul J. Nelson  
J. Nestor  
Jason D. Oberon  
Saturnin Onichimonski  
Richard R. Peynelo  
John A. Pregenzer

Ralph F. Randall  
B. Rasmussen  
Philip E. Reynolds  
James C. Rowe  
Daniel F. Santos  
Theodore Schoenberger  
M. Simonsen  
Haavard Skilnand  
C. W. Skotnicki  
Joseph B. Smith  
Harold Sorenson  
John M. Stanley  
Ralph W. Stockman  
Alexander Talkun  
Charles E. Taylor  
George Toth  
Theodore F. Verhey  
Homer M. Waterman  
Harold W. Wheeler  
Jerome W. Winterfield  
John Wright  
Modesto Zaar  
Bruno H. Zahlmann

(continued on page 2)

review four orders of the United States Court of Claims entered on April 12, 1965. All four cases involve identical questions.

### Citation to Opinion Below

There are no opinions. The orders of the Court of Claims (R. Amell 43, Allwein 44, Bennett 49, Detling 51) are unreported, and are printed in Appendix B hereto, *infra*, p. 16.

### Jurisdiction

The orders of the Court of Claims were entered on April 12, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. § 1255(1).

### Question Presented

Whether the United States Court of Claims may refuse to entertain an action for wages against the United States

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(continued from page 1)

#### *Allwein v. United States*

James J. Allwein  
Raymond H. Belisle  
Frank H. Collins  
Thomas D. Outten

Joseph E. Hart  
Randall D. Hartley  
William G. Hill  
George E. Hughes

James J. Lee  
Earl Payne  
Junior A. Tyler

#### *Bennett v. United States*

Jack E. Bennett  
Stanley R. Brooks  
Roy S. Coggeshall  
John W. Ennis

Thomas W. Gilham  
Harvey J. Marts  
Earl C. McCoid  
Charles R. Roof

John H. St. George  
Ralph J. Vandiver  
Franklin W. Warren

#### *Detling v. United States*

Chalmers O. Detling  
Francis E. James

Severt N. Olness  
Michael A. Rocco

John J. Tarpey

brought by civilian maritime employees and transfer the action to the admiralty side of the United States District Court?

### Statutes Involved

The statutory provisions involved are 28 U. S. C. §§ 1346, 1491, 2401, 2501; the Suits in Admiralty Act, 41 Stat. 525 (1920), 46 U. S. C. §§ 741, 742, 745; the Public Vessels Act, 43 Stat. 1112 (1925), 46 U. S. C. § 781; the Classification Act of 1949, § 202(8), 63 Stat. 954, as amended, 5 U. S. C. § 1082(8); the Federal Employees Pay Act of 1945, §§ 102 and 212, 59 Stat. 296, 5 U. S. C. §§ 902(c) and 913; and 48 Stat. 522 (1934) as amended, 5 U. S. C. § 673c. They are printed in Appendix A, *infra*, p. 11.

### Statement

Petitioners are 67 civilian employees of the Department of the Navy, Military Sea Transportation Service ("MSTS"), 22 civilian employees of the Department of the Navy, Naval Ordnance Laboratory, and 5 civilian employees of the Department of the Army, Corps of Engineers. They brought four separate actions against the United States in the Court of Claims for wages pursuant to the Federal Employees Pay Act and the Classification Act, *supra* (R. Amell 1, Allwein 1, Bennett 1, Detling 1). Jurisdiction of the Court of Claims was based on 28 U. S. C. § 1491.

The employees of MSTS and the Army Corps of Engineers are all licensed marine engineers employed on vessels operated by the respective agencies (R. Amell 2, Detling 1). The employees of the Naval Ordnance Laboratory are all boat group employees (R. Allwein 1, Bennett 1). The claims of all the petitioners are for periods going back more than two and up to six years before the date actions were commenced.

The respondent, in all four cases, moved to transfer to the United States District Court for the appropriate district or in the alternative to dismiss the actions (R. Amell 5, Allwein 6, Bennett 1, Detling 7). The sole grounds for the motions were that the Court of Claims does not have jurisdiction of these actions because "plaintiffs' claims are for seamen's wages allegedly earned in maritime employment aboard vessels owned and operated by the United States and are thus matters of admiralty and maritime jurisdiction justiciable exclusively in the district courts" under the Suits in Admiralty and Public Vessels Acts.

The Court of Claims granted respondent's motions to transfer in all four cases, Appendix B, *infra*, p. 16. The court did not file an opinion but in the order itself cited three previous cases also involving civilian maritime employees which were similarly transferred without opinion, as the basis for its transfers in the instant cases.

### Reasons for Granting Writ

1. The decisions of the Court of Claims (Appendix B, *infra*, p. 16) are in direct conflict with the principles contained in *Johansen v. United States*, 343 U. S. 427 (1952) and *Patterson v. United States*, 359 U. S. 495 (1959).

In the *Johansen* and *Patterson* cases, as here, the plaintiffs were civilian seamen employed by the United States. They sued for damages for personal injuries pursuant to the Public Vessels and Suits in Admiralty Acts. This Court held that the fact that the plaintiffs were seamen did not entitle them to sue in admiralty. Rather they were confined to actions under the Federal Employees Compensation Act of 1916, 63 Stat. 865, 5 U. S. C. § 751—even though the latter act limited considerably the amounts of potential recovery. The Court rejected plaintiffs' argument that they should have the same rights as other seamen stating:



“... the Federal Employees Compensation Act ... was enacted to provide for injuries to Government employees in the performance of their duties. It covers all employees ...”

*Johansen v. United States*, 343 U. S. 427, 439.

The Court reasoned that the Federal Employees Compensation Act was part of a comprehensive plan for Government employees and that any exception to it would have to be clearly specified by Congress. The Court found nothing in the Public Vessels or Suits in Admiralty Acts or the legislative history of those acts to indicate that Congress intended an exception for civilian maritime employees.

The same reasoning is applicable in this case. Since 1887 government employees have had a forum in the United States Court of Claims for actions for wages. The Tucker Act, 24 Stat. 5051 (1887) (codified in various sections of 28 U. S. C.), which gave the Court of Claims concurrent jurisdiction with the District Courts over such suits, was amended in 1898 to provide for exclusive jurisdiction in the Court of Claims. A recent amendment (August 30, 1964)<sup>2</sup> again gave the District Court (civil side) concurrent jurisdiction with the Court of Claims in actions to recover compensation by employees of the United States where the amount claimed does not exceed \$10,000. 28 U. S. C. § 1346. There is nothing in the latter section or in 28 U. S. C. § 1491 which makes an exception for government employees who are seamen. Nor is there anything in the Public Vessels and Suits in Admiralty Acts or their legislative history to indicate that Congress intended gov-

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<sup>2</sup> 72 Stat. 348. See Legislative History, U. S. Code Congressional Service 1964, p. 3814.

ernment employees, who already had a forum for wage claims, to be covered thereunder.<sup>3</sup>

2. The question presented is of importance, affecting as it does thousands of civilian seamen employed by the United States. The effect of the Court of Claims decision in the instant case is to lessen the amount of possible recovery while treating the petitioners differently from all other government employees since the statute of limitations for actions such as these is six years in the Court of Claims( or in the civil side of district court) and two years in admiralty, 46 U. S. C. § 745; 28 U. S. C. §§ 2401, 2501.

These petitioners and all other government employees who are assigned to vessels are subject to all the other federal laws which apply equally to all government employees. The Court of Claims has acquired an expertise in dealing with claims of government employees. No principles of admiralty or maritime law are involved in the instant case but rather the interpretation of federal pay statutes and agency rules and regulations.

Indeed, the Court of Claims continues to exercise jurisdiction over other types of claims involving compensation by vessel employees. See, *e.g.* *Middleton v. The United States* # 436-61, decided April 16, 1965, a suit by a chief boatswain's mate for wrongful discharge and back pay. If respondent's logic were correct, such a suit (and any other claim against the United States by civil service ves-

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<sup>3</sup> The Suits in Admiralty Act was passed in 1920 and the Public Vessels Act in 1925. The congressional debates on the suits in Admiralty Act show that Congress was concerned with "taking away the right of libel of certain government-owned vessels" that existed at that time. 59 Cong. Rec. 3631 (1920). The debate on the Public Vessels Act shows a concern to provide a forum for property and personal injury damages occasioned by the operation of certain United States vessels. Such claims previously were brought to a Committee on Claims of the Congress. 66 Cong. Rec. 2087-2089 (1925).

sel employees) would similarly have to be brought in admiralty.

There is no reasonable basis for distinguishing between government employees who are seamen and all other government employees by requiring the vessel employees to bring suits for wages in admiralty where their recovery is seriously limited. Such a requirement is a clear case of discrimination against government employees assigned to vessels and violates basic principles of equality in the administration of laws and regulations applicable to civil service employees.

3. The decision of the Court of Claims is erroneous. Since the court rendered no opinion other than to cite three previously transferred cases also involving civilian seamen it is difficult to determine precisely why the court has transferred these cases when for many years before the court had taken jurisdiction of similar claims. *Abbott v. United States*, 144 Ct. Cl. 712, 169 F. Supp. 523 (1959) (suit for overtime pay by ship pilots in Panama canal); *Adams v. United States*, 141 Ct. Cl. 133 (1958) (wage suit by ship pilots and tugmasters employed by the Navy); *Hearne v. United States*, 108 Ct. Cl. 762, 68 F. Supp. 786, cert. den. 331 U. S. 858 (1947) (suit for overtime wages by master of dredge).<sup>4</sup> Nothing has occurred since the cases above cited

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<sup>4</sup> Accord: *Henderson v. United States*, 74 F. Supp. 343 (S. D. N. Y. 1947) (Court of Claims had exclusive jurisdiction of suits for bonuses by civilian personnel employed on vessels of the U. S. Army Transport Service).

Contra: *Thomason v. United States*, 184 F. 2d 105 (9 Cir. 1950) and *Jentry v. United States*, 73 F. Supp. 899 (S. D. Cal. 1947). Although these cases were brought in the civil side of district court and did not discuss Court of Claims jurisdiction, they support respondent's position insofar as they hold that the actions should have been brought pursuant to the Public Vessels and Suits in Admiralty Acts. Both cases were decided before the *Johansen* and *Patterson* cases, *supra*, and appear to be in direct conflict with the principles expounded in these later cases.

which would indicate any congressional dissatisfaction with Court of Claims jurisdiction of government vessel employees suits for wages. Congress had just such an opportunity to so indicate in 1960 when it amended the Suits in Admiralty Act, 74 Stat. 912, 46 U. S. C. 742. Neither the amendment nor the legislative history of the amendment shows that Congress had any intention to bring civil service vessel employees under the Suits in Admiralty or Public Vessels Acts. U. S. Code Congressional Service 1960, p. 3583.

When Congress wanted civilian vessel employees of the United States to have the same rights as privately employed seamen it specifically so provided in comprehensive legislation. War Shipping Administration Clarification Act of 1943, 57 Stat. 45, 50 U. S. C. A. Appendix, § 1291. Under this Act seamen employed by the United States through the War Shipping Administration had to enforce various claims, including claims for wages, pursuant to the Suits in Admiralty Act. See *Patterson v. United States*, *supra*, 359 U. S. at 497, fn. 2, where this Court stated that the Clarification Act, *supra*, "indicates that Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States".<sup>5</sup>

If the government is going to deny to its vessel employees the same right (a six year statute of limitations) enjoyed by all other government employees, such denial must be by Act of Congress and not by the courts.

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<sup>5</sup> See also *Gaynor v. Aguilines*, 337 U. S. 810 (1949) aff'g 169 F. 2d 612 (3rd Cir. 1948), in which the circuit court said: "... the purpose of the [Clarification] Act was to provide that seamen [employed through the War Shipping Administration] even though they are federal employees, should not in these respects have the normal rights, benefits and privileges of federal employees but should have instead the rights, benefits and privileges of privately employed seamen."

## CONCLUSION

**For the foregoing reasons, this petition for a writ of certiorari should be granted.**

Respectfully submitted,

LEE PRESSMAN

DAVID SCRIBNER

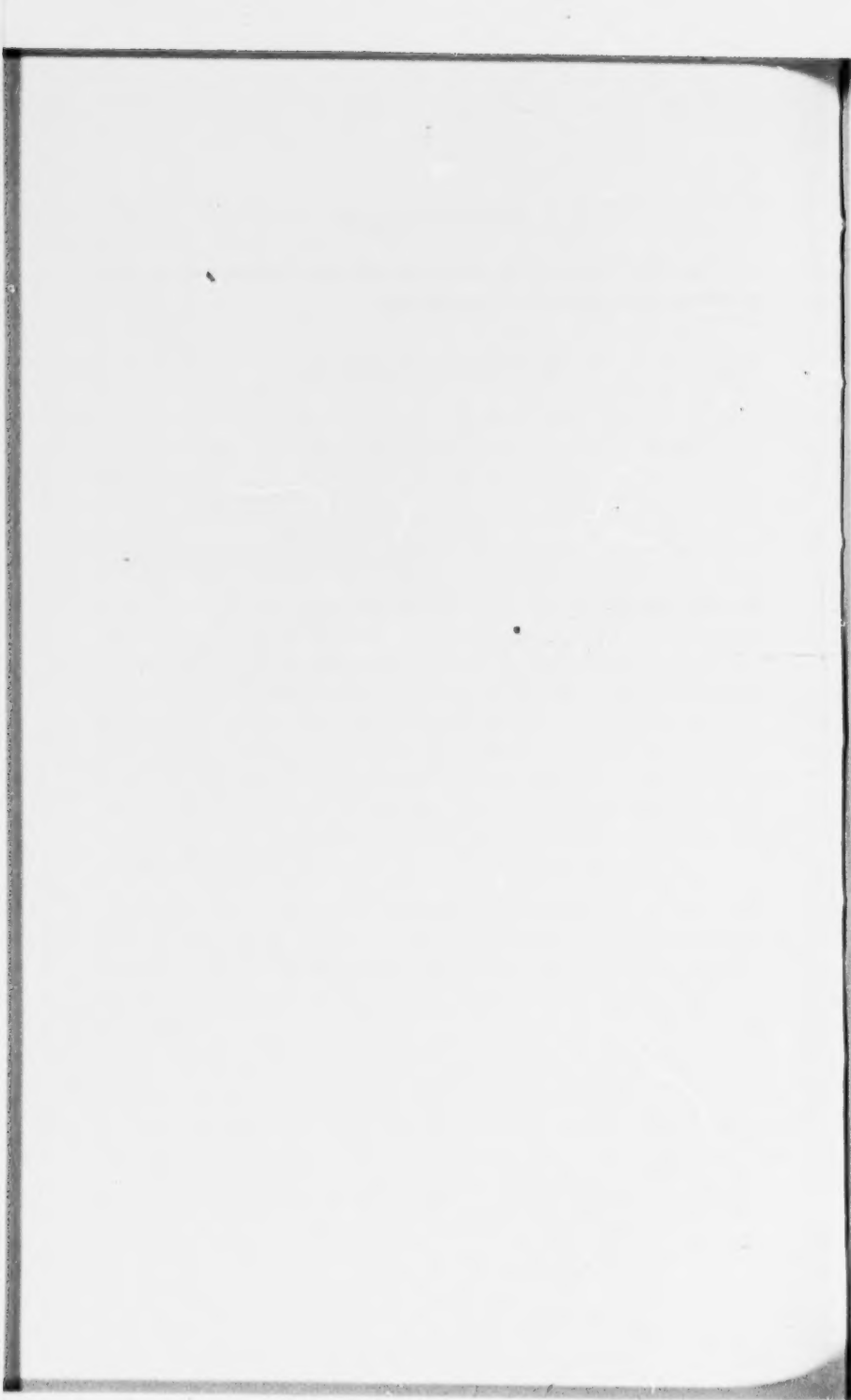
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JOAN STERN KIOK

*of Counsel.*



## Appendix A

### 28 U. S. C. § 1346

(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

\* \* \*

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

\* \* \*

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

### 28 U. S. C. § 1491

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

### 28 U. S. C. § 2401

(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. . . .

### 28 U. S. C. § 2501

Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed, within six years after such claim first accrues. . . .

**SUITS IN ADMIRALTY ACT****41 Stat. 525****March 9, 1920****46 U. S. C. §§ 741-752**

Sec. 741. No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this chapter shall not apply to the Panama Railroad Company.

Sec. 742. In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. . . .

\* \* \*

Sec. 745. Suits as authorized by this chapter may be brought only within two years after the cause of action arises. . . .



**PUBLIC VESSELS ACT****43 Stat. 1112****March 3, 1925****46 U. S. C. §§ 781-790**

Sec. 781. A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States. . . .

**CLASSIFICATION ACT OF 1949****63 Stat. 954****5 U. S. C. §§ 1071-1153**

Sec. 1082. This chapter (except title XII) shall not apply to—

•   •   •

(8) officers and members of crews of vessels, whose compensation shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry;

•   •   •

**FEDERAL EMPLOYEES PAY ACT OF 1945****59 Stat. 295****5 U. S. C. §§ 901-958**

Sec. 902.

\* \* \*

(c) Sections 84, 663, 667, 672a, 673 of this title, and this chapter, except sections 913 and 947 of this title, shall not apply to employees whose basic compensation is fixed and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose.

\* \* \*

Sec. 913. Employees whose basic rate of compensation is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by wage boards or similar administrative authority serving the same purpose shall be entitled to overtime pay in accordance with the provisions of section 673c of this title. The rate of compensation for each hour of overtime employment of any such employee shall be computed as follows \* \* \*

**ACT OF JUNE 26, 1936****48 Stat. 522 as Amended****5 U. S. C. § 673c**

The weekly compensation, minus any general percentage reduction which may be prescribed by Act of Congress, for the several trades and occupations, which is set by wage boards or other wage-fixing authorities, shall be re-established and maintained at rates not lower than necessary to restore the full weekly earnings of such employees in accordance with the full-time weekly earnings under the respective wage schedules in effect on June 1, 1932: *Provided*, That the regular hours of labor are established at not more than eight per day or forty per week, but work in excess of such hours shall be permitted when administratively determined to be in the public interest: *Provided further*, That overtime work in excess of eight hours per day or in excess of forty hours per week shall be compensated for at not less than time and one-half the basic rate of compensation, except that employees subject to this section who are regularly required to remain at or within the confines of their post of duty in excess of eight hours per day in a standby or on-call status shall be paid overtime rates only for hours of duty, exclusive of eating and sleeping time, in excess of forty per week.

• • •

**Appendix B****Order**

IN THE

UNITED STATES COURT OF CLAIMS

No. 387-64

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HARRY J. AMELL, ET AL.

v.

THE UNITED STATES

---

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al., v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of New York.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN  
Chief Judge

**Order**

IN THE  
UNITED STATES COURT OF CLAIMS  
No. 423-64

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JAMES J. ALLWEIN, ET AL.

v.

THE UNITED STATES

---

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al., v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN  
Chief Judge

**Order**

IN THE

**UNITED STATES COURT OF CLAIMS**

**No. 269-64**

—o—

**JACK E. BENNETT, ET AL.**

**v.**

**THE UNITED STATES**

—o—

This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al., v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the United States District Court for the Southern District of Florida.

The clerk will forward to the clerk of said court a certified copy of the record made here.

**BY THE COURT**

**Apr 12 1965**

**WILSON COWEN**  
**Chief Judge**

**Order**

IN THE  
UNITED STATES COURT OF CLAIMS

No. 333-64

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CHALMERS O. DETLING, ET AL.

v.

THE UNITED STATES

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This case comes before the court on defendant's motion to transfer or dismiss. Upon consideration thereof, together with the opposition thereto, and without oral argument, on the basis of *Wingate v. United States*, Ct. Cl. No. 147-61; *Alesiani, et al., v. United States*, Ct. Cl. No. 266-63; and *Afnese v. United States*, Ct. Cl. No. 294-64,

IT IS ORDERED that defendant's motion to dismiss be and the same is denied, and that defendant's motion to transfer be and the same is granted in that this case is transferred to the appropriate United States District Court as shall be designated by the plaintiffs to the clerk of this court.

The clerk will forward to the clerk of said court a certified copy of the record made here.

BY THE COURT

Apr 12 1965

WILSON COWEN  
Chief Judge